

AGENDA: January 14, 2003

4.4

CATEGORY: Consent

DEPT.: City Attorney

TITLE: Adoption of Heritage Tree Ordinance
Amendments

RECOMMENDATION

Adopt AN ORDINANCE AMENDING ARTICLE II OF CHAPTER 32 OF THE MOUNTAIN VIEW CITY CODE, RELATING TO PROTECTION OF THE URBAN FOREST. (First reading: 6-0)

FISCAL IMPACT—None.

BACKGROUND AND ANALYSIS

The City Council introduced the ordinance (Attachment 1) on December 10, 2002 after nearly 18 months of study and public participation. The ordinance amends in its entirety Article II of Chapter 32 of the Mountain View City Code, relating to protection of the urban forest. It adds refinements and reorganization to the criteria upon which removal requests are evaluated and includes organizational changes to the permit process. Additionally, the Council included Section 32.35(d), which is an off-site replacement option for preremoval requests. This option would allow an applicant to request that replacement trees be placed off-site and/or the payment of a fee in lieu of planting replacement trees on-site. This option merely allows the applicant to make a request. The request will then be evaluated in the context of the overall permit application.

The Council at that same meeting also directed staff to return to Council with additional options relative to the adoption of additional guidelines or policy directives relative to restitutionary remedies in the case of illegal removals. Staff is currently preparing this material and will initially present it to the Council as a brief study session item.

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PUBLIC NOTICING—Agenda posting.

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MDM/9/CAM
014-01-14-03M^

Attachment: 1. Ordinance

ORDINANCE NO.

AN ORDINANCE AMENDING ARTICLE II OF CHAPTER 32
OF THE MOUNTAIN VIEW CITY CODE,
RELATING TO PROTECTION OF THE URBAN FOREST

Section 1. Chapter 32, Article II, consisting of Sections 32.22 through 32.39, relating to PROTECTION OF THE URBAN FOREST, is hereby amended to read as follows:

"ARTICLE II. PROTECTION OF THE URBAN FOREST.

SEC. 32.22. Findings and purpose.

The City of Mountain View lies between the foothills of the Santa Cruz Mountains and the San Francisco Bay and the beauty and health of this area has been greatly enhanced by the presence of large numbers of majestic trees. Development of the city and the surrounding urban sprawl have resulted in the removal of a great number of these trees. Further uncontrolled and indiscriminate destruction of mature trees would detrimentally affect the health, safety and welfare of the City of Mountain View. The preservation program outlined in this article contributes to the welfare and aesthetics of the community and retains the great historical and environmental value of these trees.

This article sets forth the policy of the city to require the preservation of all healthy heritage trees unless reasonable and conforming use of the property justifies the removal, cutting, pruning, and/or encroachment into the drip line of a heritage tree. (Ord. No. 10.96, 9/24/96.)

SEC. 32.23. Definitions.

For the purposes of this chapter, the following terms shall have the meaning set forth in this section:

- a. "Director" shall mean the director of the city's community services department or his/her designee.
- b. "Drip line" shall mean the outermost edge of the tree's canopy. When depicted on a map, the drip line will appear as an irregular-shaped circle that follows the contour of the tree's branches as seen from overhead.

c. "Heritage tree" shall mean any one of the following:

1. A tree which has a trunk with a circumference of forty-eight (48) inches or more measured at fifty-four (54) inches above natural grade;

2. A multi-branched tree which has major branches below fifty-four (54) inches above the natural grade with a circumference of forty-eight (48) inches measured just below the first major trunk fork.

3. Any quercus (oak), sequoia (redwood), or cedrus (cedar) tree with a circumference of twelve (12) inches or more when measured at fifty-four (54) inches above natural grade;

4. A tree or grove of trees designated by resolution of the city council to be of special historical value or of significant community benefit.

d. "Owner" shall mean the owner of the real property on which the tree is situated as shown on the most recent county assessor's roll, and includes any successor in interest to the owner.

e. "Permit" or "removal permit" or "heritage tree removal permit" may be used interchangeably and shall mean the permit required by Sec. 32.27 of this article.

f. "Person" shall mean any individual, partnership, firm, association, corporation, and any agent, employee, contractor or representative thereof.

g. "Proposed decision" shall mean the decision of the director in nondevelopment-related removals.

h. "Removal" shall mean the physical removal of a tree or causing the death of a tree through damaging, poisoning, or other direct or indirect action, including excessive trimming, pruning or mutilation that sacrifices the health, destroys or diminishes the aesthetic quality, or diminishes the life expectancy of the tree(s). (Ord. No. 10.96, 9/24/96.)

SEC. 32.24. Council designation of heritage trees.

The council may, by resolution, designate any tree or grove of trees on public or private property as heritage trees. Prior to adoption of a resolution designating a tree or grove of trees on private property to be heritage trees as defined in Sec. 32.23(c)(4), the owner shall receive written notice of the proposal by personal delivery or by certified mail not less than ten (10) days prior to the decision. (Ord. No. 10.96, 9/24/96.)

SEC. 32.25. Heritage tree preservation.

a. Any person who owns, controls, has custody or possession of any real property within the city shall maintain and preserve all heritage trees located thereon in a state of good health. Failure to do so shall constitute a violation of this section.

b. No person shall willfully injure, damage, destroy, move or remove a heritage tree except pursuant to the terms and conditions of a permit granted pursuant to this article.

c. **Construction/grading activity.** Any owner or person who conducts any grading or construction activity on property shall do so in such a manner as to not threaten the health or viability or cause the removal of any heritage tree. The director or the community development director may impose conditions on any city permit to require construction fencing and/or the use of protective grading methods to assure compliance with this section. In addition to said conditions, the following shall apply:

1. Except as otherwise provided in this section, excavation adjacent to any heritage tree shall not be permitted where material damage to the root system may result. When proposed developments encroach into the drip line of any heritage tree, special construction techniques to allow the roots to breathe and obtain water may be required as a condition(s) to the approval of any application for a building, zoning permit or removal permit.

2. The existing ground surface within four (4) feet (measured horizontally) of the base of any heritage tree shall not be cut, filled, compacted or pared except for existing, permitted encroachments such as sidewalks or as otherwise expressly approved by the community development director pursuant to an approved arborist's report. Tree wells may be used where advisable. (Ord. No. 10.96, 9/24/96.)

SEC. 32.26. Urban forestry board.

a. The urban forestry board of the City of Mountain View is hereby created and shall consist of the members of the parks and recreation commission.

b. The urban forestry board shall have the following powers and duties:

1. Act as decision-making body for heritage tree appeals as set forth in Sec. 32.31 of this chapter;

2. Make recommendations to the city council regarding modifications to this article;

3. Assist in the planning of urban forest management for the city; and
4. Make recommendations relative to appropriate mitigation for removals associated with city capital projects pursuant to Section 32.33. (Ord. No. 10.96, 9/24/96.)

SEC. 32.27. Permit required: Exemptions.

a. **Permit required.** No person shall cut down, destroy, remove or relocate any heritage tree growing on public or private property, or on any city-owned property, unless a valid heritage tree removal permit has been granted by the city pursuant to this article. Construction of improvements within the drip line of a heritage tree shall also require a permit issued pursuant to this article.

b. **Exemptions.** A permit is not required to cut, encroach, remove, or relocate a tree(s) under the following circumstances:

1. Trees damaged by thunderstorms, windstorms, floods, earthquakes, fires or natural disasters and determined to be dangerous by a peace officer, firefighter, civil defense official or code enforcement officer acting in their official capacity. The owner shall notify the director within five (5) days of any action taken with respect to the emergency; or

2. When removal is determined necessary by fire department personnel actively engaged in fighting a fire; or

3. Employees of the city, during an emergency, may take such action with regard to trees on city-owned property as may be necessary to maintain the safety of city operations and/or the safe conditions of city property; or

4. Public utilities subject to the jurisdiction of the Public Utilities Commission of the State of California may take such action as may be necessary to comply with the safety regulations of said commission and as may be reasonably necessary to maintain the safe operation of their facilities. No pruning at the direction of any public utility or its agents pursuant to this subsection shall be performed in such a manner as to leave the tree in an unbalanced, unstable or other dangerous condition; or

5. Any heritage tree may be removed from the landfill area, including the Shoreline golf course, when determined by the city's director of public works or the director to be necessary for the proper maintenance and operation of the landfill or golf course; or

6. Any heritage tree which the city's arborist has determined is dead may be removed.

c. **Process.** Permits for development-related removals shall be secured pursuant to Sec. 32.29. Permits for nondevelopment-related removals shall be secured pursuant to Sec. 32.30. Sec. 32.31 shall apply to all removal permits. (Ord. No. 10.96, 9/24/96.)

SEC. 32.28. Application for removal permit; Term of permit.

a. An application for removal of any heritage tree connected with a discretionary development project permit subject to review by the Development Review Committee, Zoning Administrator or the city council shall be filed as a development-related removal pursuant to Sec. 32.29.

b. All other applications for removal of a heritage tree or trees, including construction projects which require a building permit only, shall be filed as a nondevelopment-related permit pursuant to Sec. 32.30.

c. All applications for heritage tree removal permits shall specify the number, species, size, and exact location of the tree or trees involved, a brief statement of the reason for the requested removal, and any other pertinent information as may be required by the city. The applicant may be required to provide a plot plan or survey drawn to scale depicting the tree(s) and any improvements on the property and/or an arborist's report.

d. A heritage tree removal permit shall be valid for a period of two (2) years from the date of issuance. Said permit may be extended by and at the discretion of the Zoning Administrator for development-related permits and by the director for nondevelopment-related permits. Removal permits shall expire when any underlying permit expires and extensions shall not exceed the life of any underlying permit.

SEC. 32.29. Permits: Development-related removals.

a. **Filing an application.**

An application for a development-related heritage tree removal permit shall be filed with the community development department. The application shall be filed and processed concurrently with any other application(s) for development entitlements.

b. **Processing.**

1. The community development department shall review all heritage tree removal permits filed pursuant to this section. The permit application shall be referred

to the director for review and comment before action is taken. The application shall be approved, conditionally approved or denied by the official or hearing body that acts on the companion development permits.

2. Five (5) days prior to the hearing on the heritage tree removal application, the applicant shall be required to wrap each heritage tree subject to removal with designated yellow tape as directed by the community development department and shall also be required to post a notice approved by the community development department stating the time, date and place of the development project and heritage tree removal hearing. Said notice shall be posted at or near the public right-of-way and shall be legible from the public right-of-way.

3. In no event shall any heritage tree approved for removal pursuant to this section be removed prior to the expiration of any applicable appeal period or issuance and initiation of the building permit for the companion development project.

4. Notice of the decision on the permit shall be made by personal delivery or certified mail to the owner, the applicants and by first-class mail to any other person who has filed a written request for such notice with the community development department. Notice of the decision shall also be incorporated into any noticing of the accompanying development permit.

SEC. 32.30. Permits: Nondevelopment-related removals.

a. Filing an application.

An application for a nondevelopment-related heritage tree removal permit, including projects requiring a building permit only, shall be filed with the community services department.

b. Processing.

1. The director shall review and approve, conditionally approve or deny the nondevelopment-related removal application.

2. In no event shall any heritage tree approved for removal pursuant to this section be removed prior to the expiration of any applicable appeal period or issuance of a building permit for the companion project when a building permit is required.

3. The community services department staff or, at their discretion, the applicant, shall wrap each heritage tree subject to removal with designated yellow tape within five (5) days of filing the application. The community services department shall

post notice of the decision on the application for such permit on the tree or trees or at or near the public right-of-way and by personal delivery or certified mail to the owner and by first class mail to any other person who has filed a written request for such notice with the director. The on-site posting shall be legible from the public right-of-way. Such notice shall state the director's decision on the application and shall provide information on the appeal process pursuant to this section.

SEC. 32.31. Appeals.

a. Any person aggrieved or affected by a decision on a requested removal, or a member of the urban forestry board, or of the city council if the decision was made by the Development Review Committee or the Zoning Administrator, may appeal the decision by filing a written notice of appeal with the city clerk stating the grounds for the appeal, and paying the requisite appeal fee, as established by council resolution, within ten (10) calendar days after the notice of the decision is posted or mailed. A member of the city council or urban forestry board shall be exempt from payment of the appeal fee.

b. Development-related removal permit appeals shall be heard by the City Council. Nondevelopment-related appeals shall be heard by the urban forestry board.

c. An appeal shall automatically stay issuance or denial of the permit until the appeal has been completed. If no appeal is timely filed, the permit shall issue as indicated in the notice of the decision.

d. Notice of the appeal shall be made by personal delivery or certified mail to the owner, the permit applicant and by first-class mail to any other person who has filed a written request for such notice. Notice shall also be given to the decision-maker. The decisions of the urban forestry board and city council shall be final. Notice of the decision shall be incorporated into the findings report. The denial of a permit shall be with prejudice and neither the owner nor any applicant shall reapply for the removal of the same heritage tree for a period of two (2) years from said denial unless the director of community services or director of community development finds, in writing, prior to the filing of the application for removal, that there has been a material change in circumstances.

SEC. 32.32. Post-removal permits.

a. Any person who removes a heritage tree without a permit issued pursuant to this article shall secure from the city a post-removal permit.

b. **Process.** The post-removal permit shall be processed pursuant to Sec. 32.29 or 32.30, as applicable.

c. **Determination of heritage tree status.** If the removal has reduced the tree below fifty-four (54) inches from the natural grade, the tree will be presumed to be of heritage status and thus subject to this article if the cut portion of the tree meets the applicable measurement threshold, or if the remaining in-ground portion, including the stump, meets the minimum threshold for protection.

d. In granting a post-removal permit, the decision-maker may require the replanting of a tree, including a tree of heritage size, in the exact location where the illegal removal occurred.

SEC. 32.33. City capital improvement projects.

City capital improvement projects which propose the removal of any heritage tree shall be submitted by the city project staff to the city's arborist for review and recommendation of appropriate mitigation measures. The arborist's recommendations shall be forwarded by city project staff to the urban forestry board for their recommendation on the number, size and location of replacement trees. The recommendation of the urban forestry board shall be forwarded by city project staff to the city council for their consideration with the approval of the project.

SEC. 32.34. Other public agency projects.

Unless otherwise exempted by state law, other public agencies which propose to remove any heritage tree within the City of Mountain View for any reason shall comply with the provisions of this article. If the agency is exempt, the agency shall submit any environmental study of the proposed project, if applicable, including any proposed mitigation of the loss of any heritage tree, to the director for review. City staff shall review the project documentation, including any relandscaping plan, and shall work cooperatively and informally with that agency's staff to adequately mitigate the removal of any heritage tree.

SEC. 32.35. Criteria for removal; Conditions; Findings.

a. **Criteria for removal.** The determination on each application shall be based upon a minimum of one of the following criteria; however, the decision-maker shall consider additional criteria, if applicable, in weighing the decision to remove a heritage tree, with an emphasis on the intent to preserve heritage trees.

1. The condition of the tree with respect to age of the tree relative to the life span of that particular species, disease, infestation, general health, damage, public nuisance, danger of falling, proximity to existing or proposed structures, and interference with utility services.

2. The necessity of the removal of the heritage tree in order to construct improvements and/or allow reasonable and conforming use of the property when compared to other similarly situated properties.

3. The nature and qualities of the tree as a heritage tree, including its maturity, its aesthetic qualities such as its canopy, its shape and structure, its majestic stature and its visual impact on the neighborhood.

4. Good forestry practices such as, but not limited to, the number of healthy trees a given parcel of land will support and the planned removal of any tree nearing the end of its life cycle and the replacement of young trees to enhance the overall health of the urban forest.

5. **Balancing criteria.** In addition to the criteria referenced above which may support removal, the decision-maker shall also balance the request for removal against the following which may support or mitigate against removal:

A. The topography of land and effect of the requested removal on erosion, soil retention, water retention, and diversion or increased flow of surface waters.

B. The effect of the requested removal on the remaining number, species, size and location of existing trees on the site and in the area.

C. The effect of the requested removal with regard to shade, noise buffers, protection from wind damage and air pollution and the effect upon the historic value and scenic beauty and the health, safety, prosperity and general welfare of the area and the city as a whole.

b. **Conditions of approval.** Approval of an application for a permit may include reasonable conditions to insure compliance with the content and purpose of this article, including but not limited to:

1. Requiring the replacement or placement of an additional tree or trees on the subject property or off-site to offset the loss of a tree, limbs, or encroachment into the drip line. The number, species, size and location of said replacement tree(s) shall be determined by the director upon recommendation of the city arborist.

2. Requiring construction fencing or barriers to protect adjacent heritage trees or other landscaping.

3. Requiring protective grading requirements to avoid damaging the root structure of the tree or adjacent trees.

4. Requiring posting of a security bond to ensure that replacement trees are planted and become established (one year after planting) and to compensate for the lost trees due to illegal removal.

5. Requiring the relocating of a tree on-site or off-site, or the planting of a new tree on-site or off-site to offset the loss of a tree.

6. Requiring a maintenance and care program be initiated to ensure the continuing health and care of heritage trees on the property.

7. Requiring payment of a fee or donation of a boxed tree(s) to the city or other public agency to be used elsewhere in the community should a suitable replacement location of the tree not be possible on-site. The fee for replacement of a tree or trees shall be, at a minimum, based on the cost of a 24" boxed tree of same species, delivered and installed.

c. **Findings.** If a permit is denied or conditions are attached, the director or decision-maker shall provide the applicant with a written statement of the reasons for said denial or conditions based upon the criteria and conditions set forth in this section.

d. **Off-site replacement option.** An applicant for a preremoval permit may request that any replacement trees be placed off-site or that he/she be permitted to pay a fee in lieu of replacement. The decision-maker shall consider the request in light of the balancing criteria set forth in Section 32.35(a)(5), above."

SEC. 32.36. Nonliability of city.

Nothing in this article shall be deemed to impose any liability for damages or a duty of care of maintenance upon the city or upon any of its officers or employees. The owner of any private property shall have the duty to keep heritage trees upon the property in a safe, healthy condition. Unless subject to an exemption from a permit pursuant to this article, any person who believes that a tree located on property possessed, owned or controlled by them is a danger to the safety of themselves, others or structural improvements on-site or off-site shall secure the area around the tree or support the tree, as appropriate, to safeguard both persons and property from harm pending compliance with this article.

SEC. 32.37. Regulations.

The City Council by resolution may promulgate administrative guidelines and/or regulations as necessary to implement this article. The director or the urban forestry board may promulgate administrative guidelines and/or regulations consistent with this article as needed, subject to council approval.

SEC. 32.38. Penalty; Restitution.

a. Penalty.

Any violation of this article shall be deemed a misdemeanor, punishable as set forth in the City Charter.

b. Restitution for unlawful removal.

1. It has been determined that heritage trees within the city are valuable assets to the citizens of Mountain View and the neighboring communities. The loss or damage to any of these trees results in a loss to the community and detrimentally affects the health, safety and welfare of the citizens of Mountain View. Therefore, the loss of or damage to any unlawfully removed or damaged heritage tree will require restitution. In addition to any applicable penalties, any person who willfully injures, damages, destroys, removes or relocates any heritage tree in violation of the terms of this article shall be responsible for proper restitution in the form of replacement trees or fees in lieu of replacement.

2. The number, species, size and location of said replacement tree(s) shall be determined by the director or other decision-maker, as applicable. The minimum size of a replacement tree shall be a twenty-four inch (24") box size tree.

3. Any fees collected in lieu of planting replacement trees shall be used for the purpose of enhancing the urban forest.

SEC. 32.39. Tree valuation.

For purposes of replacement for trees removed, the method of valuation shall be the "Standards for Valuation of Amenity Trees" of the International Society of Arboriculture. These standards shall apply to those trees removed without a permit as well as those removed with a permit, which require on-site or off-site replacements of similar value for the trees removed. (Ord. No. 10.96, 9/24/96.)"

Section 2. The provisions of this ordinance shall be effective thirty (30) days from and after the date of its adoption.

Section 3. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the other remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 4. Pursuant to Section 522 of the Mountain View City Charter, it is ordered that copies of the foregoing proposed ordinance be posted at least two (2) days prior to its adoption in three (3) prominent places in the City and that a single publication be made to the official newspaper of the City of a notice setting forth the title of the ordinance, the date of its introduction, and a list of the places where copies of the proposed ordinance are posted.

MDM/5/ORD
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